

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of:

Petitions for Declaratory Ruling Regarding  
Public, Educational, and Governmental  
Programming

MB Docket No. 09-13  
CSR-8126, CSR-8127, CSR-8128

**COMMENTS OF  
THE CITY OF HOUSTON, TEXAS**

Gail A. Karish  
MILLER & VAN EATON, L.L.P.  
580 California St., Suite 1600  
San Francisco, CA 94104  
(415) 477-3655

*Counsel for the City of Houston, Texas*

March 9, 2009

## **Introduction**

The City of Houston, Texas (the “City”) submits these comments (“Comments”) in response to the Public Notice (DA 09-203) released by the Commission on February 6, 2009.<sup>1</sup> The Public Notice solicited comments on three petitions for declaratory ruling regarding the carriage of public, educational and governmental (“PEG”) channels by various video providers, including AT&T. While the City is supportive of all three petitions, these comments focus on the petition filed by the Alliance for Community Media, *et al.* (“ACM Petition”), CSR-8126 which asks the Commission to declare that AT&T’s method of delivering PEG programming over its U-verse system violates various provisions of the Communications Act of 1934, as amended, and related Commission rules and policies.

### **I. AT&T OFFERS U-VERSE SERVICE IN THE CITY WITHOUT CARRYING THE CITY’S PEG CHANNELS**

AT&T offers its U-verse service to residents in the City under a state video franchise. The U-verse service includes a Channel 99 PEG platform, the accessibility, functionality and signal quality of which are fully described in the ACM Petition, and will not be repeated here. AT&T has refused to carry PEG channels in the City except via its U-verse Channel 99 PEG platform.<sup>2</sup>

Before launching its U-verse service in the City, AT&T made presentations to the City regarding its Channel 99 PEG platform. The City immediately had concerns about the platform. Rather reluctantly, the City entered into an agreement with AT&T to carry its four (4) PEG

---

<sup>1</sup> *Entities File Petitions for Declaratory Ruling Regarding Public, Educational, and Governmental Programming*, Public Notice DA 09-203, MB Docket No. 09-13, CSR-8126, CSR-8127, CSR-8128 (February 6, 2009).

<sup>2</sup> Declaration of Dwight Tyrone Williams Sr. (“Williams Decl.”) attached hereto as Exhibit A, at ¶ 5.

channels in this manner on U-verse in 2007, but the channels are still not carried on the system due to technical implementation problems.<sup>3</sup> These problems are discussed further below and eventually led the City to conclude that the PEG platform falls short of meeting AT&T's obligations under federal law.

## **II. THE FAILURE OF AT&T TO PASS THROUGH CLOSED CAPTIONING AND SECONDARY AUDIO IS SIGNIFICANT.**

The ACM Petition argues, among other things, that by effectively stripping content from PEG signals by failing to pass through secondary audio and closed captioning, AT&T not only violates the FCC's closed captioning rules (rules that the FCC has a special duty to enforce) but also violates the anti-censorship provisions of Section 611(e) of the Communications Act, 47 U.S.C. §531(e).<sup>4</sup> The Section 611(e) claim – that AT&T is effectively altering the speech being presented – is particularly obvious when one looks at the way in which PEG channels are programmed in Houston.

The City has a significant population of individuals who are deaf, hard of hearing or have a hearing disability.<sup>5</sup> The City has determined it is of the utmost importance to provide closed captioning on their government PEG channel to communicate effectively with these residents.<sup>6</sup> AT&T's failure to pass through closed captioning on PEG channels harms these residents and the City in its efforts to permit these residents to watch and understand their local

---

<sup>3</sup> Williams Decl. at ¶ 5-6.

<sup>4</sup> Localities have an independent right to enforce Section 611(e), but the closed captioning rules are enforceable only by the FCC. By making it clear that Section 611(e) does reach stripping PEG signals of content carried within a channel, the FCC can avoid conflicting court determinations.

<sup>5</sup> Williams Decl. at ¶ 8.

<sup>6</sup> Williams Decl. at ¶ 8.

elected officials at work, and likewise eliminates a key portion of the intended content – also content designed to serve a traditionally underserved part of the population.<sup>7</sup>

The City also has a large Spanish speaking population, numbering in the hundreds of thousands.<sup>8</sup> The City has determined it is of the utmost importance to provide Spanish language secondary audio on its government PEG channel to communicate effectively with Spanish-speaking residents.<sup>9</sup> AT&T's failure to pass through secondary audio signals on PEG channels harms these residents and the Cities in their efforts to permit Spanish-speaking residents to watch and understand their local elected officials at work.<sup>10</sup>

While AT&T has indicated it will test and hopes to implement a solution, this does not eliminate the need for a declaratory judgment ruling. The company does not concede that it is subject to these obligations, and its compliance is wholly voluntary. This is the second time that the company has failed to comply with a major obligation (EAS being the first) and unlike in the EAS context, the company has never sought a waiver of the rules, here waiting for an extended period of time to take the issue seriously. In fact, until recently, the company had no plans for correcting the secondary audio and closed captioning issues on any reasonable schedule - just last year, one of AT&T's "product roadmaps" indicated that secondary audio and closed captioning would only be addressed in the long term.<sup>11</sup> It is important for the FCC to hold these companies to the federal obligations.

---

<sup>7</sup> Williams Decl. at ¶ 9.

<sup>8</sup> Williams Decl. at ¶ 10.

<sup>9</sup> Williams Decl. at ¶ 10.

<sup>10</sup> As one of the purposes of PEG channels is to provide local information to people who have traditionally been underserved, the elimination of this content is at odd with the basic purposes of the PEG channels. Williams Decl. at ¶ 10.

<sup>11</sup> See AT&T's "PEG High Level Product Roadmap" attached hereto as Exhibit B.

**III. THE ACM's DISCUSSION OF TECHNICAL STANDARDS IS ON POINT; THE NECESSITY FOR EQUIVALENT TECHNICAL TREATMENT OF PEG AND BROADCAST CHANNELS IS IMPLICIT IN THE COMMUNICATIONS ACT.**

As the ACM points out, the FCC is obligated to establish minimum technical standards for cable systems, and to update those standards periodically. Section 624(e), 47 U.S.C. §544(e). The ACM also points out that traditionally, these federal technical standards required cable operators to provide channels of the same minimum technical quality for delivery of PEG as were required for delivery of broadcast signals. The ACM urges that the “broadcast equivalence” standard should be applied here. That argument is supported by other provisions of the Communications Act in addition to those identified by the ACM.

The must-carry rules for local commercial, qualified low power, and noncommercial educational broadcast stations are found in Title VI, in Sections 614 and 615 of the Communications Act, 47 U.S.C. §§534 and 535. Section 615(d) provides that these stations may be carried on unused PEG channels with the approval of the franchising authority:

**(d) Placement of additional signals**

A cable operator required to add the signals of qualified local noncommercial educational television stations to a cable system under this section may do so, subject to approval by the franchising authority pursuant to section 531 of this title, by placing such additional stations on public, educational, or governmental channels not in use for their designated purposes.

*See also*, 47 CFR § 76.56(c).

Similarly, Section 614 provides for the mandatory carriage of qualified low power stations in the same manner as commercial broadcast stations, Section 614(a). Further, Subsection 614(c)(2) provides that the qualified low power stations may be carried on unused PEG channels with the approval of the franchising authority:

**(2) Use of public, educational, or governmental channels**

A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant

to section 531 of this title, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

*See also*, 47 CFR § 76.56(c).

While an operator is certainly not required to carry non-commercial channels on unused PEG channels, the Act clearly envisions that the operator may do so as a matter of right. The necessary implication of giving the cable provider the option of putting certain must-carry stations on unused PEG channels (with franchising authority approval) is that Congress assumed PEG channels would be technically equivalent to commercial broadcast channels. Otherwise, an operator could evade its obligations to carry signals without degradation under the must-carry rules simply by making non-commercial educational channels part of a Channel 99-type solution.

While the ACM Petition identifies a number of flaws with the Channel 99 solution, the City's own experience suggests that the Channel 99 platform is far from equivalent in a technical sense to a standard channel.<sup>12</sup> The City had early concerns over the standards specified by AT&T, as they did not conform to typical broadcast video standards, and therefore, in the City's view, had the potential to generate varying degrees of undesirable artifacts dependant on the program content, and required a considerable amount of data compression and a reduction in quality.<sup>13</sup> It nonetheless purchased and installed equipment and software specified by AT&T to transmit its PEG channels in the manner required by AT&T.<sup>14</sup> Subsequent to installation, the City and AT&T spent months conducting numerous tests, holding demonstrations at AT&T's Bellaire U-verse facility viewing room, making multiple attempts to correct problems (even

---

<sup>12</sup> Williams Decl. at ¶ 6.

<sup>13</sup> Williams Decl. at ¶ 6(b).

<sup>14</sup> Williams Decl. at ¶ 6(a).

installing software updates)---the result of which confirmed that the City's concerns about reduced quality and noticeable artifacts, as well as loss of audio to video, were warranted. The quality was simply below the expectations of the City, and never did match the quality of the PEG programming as carried by the other video service providers.<sup>15</sup>

On 3 December 2008, the City and AT&T reached a compromise that involves the installation of a replacement package of equipment and software that AT&T claims will correct the technical problems, but still remains to be tested. While this may result in an improvement to the signal, there is no guarantee it will result in either a quality comparable to broadcast signals, or that the City's signal will be delivered to subscribers without substantial degradation.<sup>16</sup>

These numerous technical problems have harmed the City by costing it valuable time and resources dedicated to trying to work out the kinks in AT&T's rather inadequate PEG platform, and denying residents the ability to view these channels on AT&T's system.

The City's experience during the testing and provisioning process is that AT&T encodes, transmits and delivers PEG signals that are subject to degraded video and audio sync problems. Transmitting a significantly degraded signal to subscribers should, at the very least, be intolerable under the Communications Act. It not only affects the communicative power of the message itself (a violation of Section 611(e)); it also is inconsistent with the Commission's approach to technical standards, as ACM has explained.

---

<sup>15</sup> Williams Decl. at ¶ 6(c)-(h).

<sup>16</sup> Williams Decl. at ¶ 6(i).

## CONCLUSION

For all the foregoing reasons, the Commission should declare that AT&T's PEG platform violates federal law in the manner described in the ACM Petition.

Respectfully submitted,



Gail A. Karish  
MILLER & VAN EATON, L.L.P.  
580 California St., Suite 1600  
San Francisco, CA 94104  
(415) 477-3655

*Counsel for the City of Houston, Texas*

March 9, 2009

6225\05\00145922.DOC



Exhibit A

Declaration of Dwight Tyrone Williams Sr.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of:

Petitions for Declaratory Ruling  
Regarding Public, Educational, and  
Governmental Programming

MB Docket No. 09-13  
CSR-8126, CSR-8127, CSR-8128

**DECLARATION OF DWIGHT TYRONE WILLIAMS SR.**

I, Dwight Tyrone Williams Sr., declare as follows:

1. I submit this declaration under penalty of perjury in response to the notice issued in the above-captioned proceeding.
2. I currently serve as Division Manager of HTV Houston Television ("HTV") for the City of Houston, Texas (the "City"). I have served in this position since 2008. I have worked at HTV (formerly known as "The Municipal Channel") for over 8 years. Prior to becoming Division Manager, I was Operations Supervisor responsible for oversight of the broadcast signal quality of HTV. Some of my specific duties were to eliminate technical problems, provide corrective measures, and track the progress of the system. I also supervised Master Control personnel in the Digital Playback Center. In my current position, I am responsible for the implementation, management and operation of HTV Houston. My primary objective is to provide full assistance to City departments and elected officials, in developing and producing programming for the channel.

3. The City currently has four (4) PEG Channels:

**HTV Houston Television (HTV):** Providing programming of gavel-to-gavel coverage of City of Houston council meetings, city department meetings and other programs of interest to the citizens of Houston.

**Houston Community College (HCCTV):** Providing programming for post secondary, general & community interest geared toward adult education.

**Houston Independent School District (HISD):** Providing programming that is geared toward children who are twelve and under.

**Houston Media Source (HMS):** Providing Public Access programming that is reflective of the activities, culture and concerns of Houstonians. HMS also provides original local programs produced by the citizens of Houston.

4. AT&T began offering U-verse video service to residents in portions of the City in 2007 pursuant to a state video service franchise issued in 2005 to the Southwestern Bell Telephone Company D/B/A AT&T Texas by the Public Utility Commission of Texas, and amended in 2006 to expand the service footprint to include the City. It is one of several companies that provide video services in Houston. Others include traditional cable companies, large and small, like Comcast, Phonoscope, TVMAX and Suddenlink.

5. Every one of these companies, except AT&T has been willing to provide Houston's PEG channels in the same manner as they provide other commercial channels. AT&T has indicated it is only willing to carry these PEG channels via its Channel 99 platform. Although the City was uneasy about the Channel 99 PEG platform, it did reluctantly agree to have its PEG channels carried by AT&T in 2007. Discussions

spanned a number of months and resulted in a formal contract for PEG programming carriage between the City of Houston and AT&T in December 2007.

6. Now, more than 15 months later, while AT&T's U-verse service is available to residents, the PEG channels are *still not* viewable on the AT&T PEG platform. The main cause of the delay has been technical problems caused by AT&T's PEG platform. The course of events since signing the PEG contract with AT&T is summarized below:

- a. In April 2008, the City's Information Technology Department in consultation with AT&T ordered four (4) Microsoft Server 2003 servers running Microsoft Windows Media Encoder as software based encoders, one for each program stream "four-channels" at a cost of \$24,401.00 paid by the City.
- b. In April 2008 the equipment specified by AT&T was delivered and installed at the City's Operations Facility. The encoders were configured to the standards as specified by AT&T and initial testing began. The City had early concerns over the standards specified by AT&T, as they did not conform to typical broadcast video standards. The original specifications called for a video resolution of 480 pixels by 480 pixels, a 1:1 video format opposed to the standard 4:3 video format. AT&T then provided transcoding software at their distribution center to convert this non-square pixel encoding back to a standard 4:3 formats for distribution to the end customer. The employment of non-square pixelation, while reducing transmission bandwidth, has the potential of the generation of varying degrees of undesirable artifacts dependant on the program content. Furthermore, the City employs an eight-

megabit data rate for its program material. The connectivity provided by AT&T allows for only a one point two megabit data rate for transmission. This requires a considerable amount of data compression and a reduction in quality.

- c. On 7 May 2008 testing commenced with a Senior Technical Support engineer at AT&T. During this time the encoder configuration was modified to achieve the highest possible audio/video quality. Concerns surfaced during this testing as to the performance of the specified Windows Media Encoder platform. AT&T provided the City with a hardware based encoder as deployed at their other PEG operations for testing purposes.
- d. On 9 May 2008 the hardware encoder was placed online for testing. Over the next week this encoder was adjusted for best performance.
- e. On 16 May 2008 a demonstration was offered to representatives of the City at the Bellaire U-verse facility viewing room. During that demonstration grave concerns were expressed with the reduced quality and noticeable artifacts identified in the program material. Additionally, loss of audio to video synchronization was noted.
- f. Over the next several weeks AT&T and the City staff attempted to correct deficiencies in the performance of transmission by performing additional adjustments and testing. During the testing it was noted that there still existed an audio/video timing issue.
- g. On 16 June 2008 another performance demonstration was held at the AT&T facility. During this demonstration the quality of product was below the

expectations of the City and did not reflect the quality of product as carried by the other video service providers.

- h. Investigation with Microsoft indicated they were aware of these types of audio-video synchronization issues. Microsoft provided a software update which the City installed on 27 June 2008. The update offered no significant improvement in performance.
- i. On 3 December 2008, the City and AT&T reached a compromise that involves the installation of a replacement package of equipment and software that AT&T claims will correct the technical problems. However, there is no guarantee the fix will work and the only way to know is to undertake further testing, which is scheduled to begin 9 March 2009. The City will reevaluate the signal quality at that time. The AT&T technical staff requires nine days for provisioning, testing, and turn-up. Barring further technical problems, the earliest the City can expect to go-live on the AT&T PEG platform is 23 March 2009.

These numerous technical problems have harmed the City by costing it valuable time and resources dedicated to trying to work out the kinks in AT&T's PEG platform. Moreover, the City and its residents have been harmed by completely denying them the ability to communicate through PEG, because the PEG channels are not carried at all on the AT&T system.

7. In addition, we believe there remain many important problems with the Channel 99 platform, even assuming the City's PEG channels do eventually get added to AT&T's PEG platform serving residents of the City. Understanding the impact of just

two items – the failure of AT&T to pass through closed captioning and secondary audio signals – illustrates why it is important that all operators be required to provide PEG channels that fully comply with federal law requirements, such as closed captioning.

8. In Houston, approximately 15% of the population is comprised of individuals who are deaf, hard of hearing or have a hearing disability. For that reason, the City has taken steps to ensure that these citizens are able to participate meaningfully in municipal government, and in particular are able to watch and understand the City Council at work. Therefore, since 1996, the City has produced all its City Council meetings with closed captioning. In addition to initial start up costs of about \$5,000.00 to purchase and install equipment, the City spends \$40,000 per year to produce closed captioning.

9. In communications with the City, AT&T has indicated that its U-verse Channel 99 PEG delivery does not pass through closed captioning. AT&T has suggested that it could pass through PEG programming with open captioning, in other words, with the captioning always on. This is a vastly inferior option because it would mean that all persons would have to view our PEG channels with captioning on all of the time, whether desired or not. Moreover, the captioning would harm the versatility of the PEG channel because it would permanently obscure the bottom of the picture where important information and messages are routinely added.

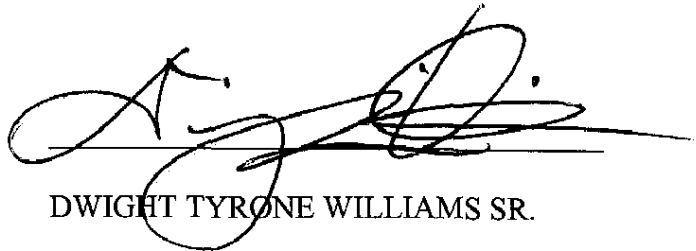
10. In Houston, two languages are predominantly spoken – English and Spanish. According to the American Community Survey (ACS) 2005-2007, Spanish is the first language for 41.7 % of the population. According to the 2009 figures from The Nielsen Company, 26.1 % of Houston households are Hispanic, and 47.7 % of those

households speak only or mostly Spanish. For that reason, the City is committed to providing a secondary audio system (SAP) so that all its citizens are able to participate meaningfully in municipal government, and in particular are able to watch and understand the City Council at work. In addition to start up costs to purchase and install equipment, the City expects to spend about \$50,000 per year to create a secondary audio signal for City Council meetings and other PEG programming. However, the absence of pass through of the secondary audio signals may affect the City's decision to implement the secondary audio because it would be reluctant to make this expenditure if carriage of secondary audio cannot be assured. In communications with the City, AT&T has indicated that its U-verse Channel 99 PEG delivery does not include secondary audio signals.

11. I declare under penalty of perjury that the facts stated herein are true and correct to the best of my knowledge, information and belief.

9 March 2009

DATE



DWIGHT TYRONE WILLIAMS SR.



Exhibit B

AT&T's PEG High Level Product Roadmap



# PEG – High Level Product Roadmap

Implemented	Completed Spring '08	Summer/Fall 2008	1 <sup>st</sup> Half 2009	Long Term
<p><b>Improved Navigation</b> - new "cookie" functionality allows a customer to return to the previously selected city, simplifying navigation and reducing time</p> <p><b>Direct Link from Main Menu</b> - customer can select PEG application without scrolling through the menu guide</p>	<p><b>Improved Picture Quality</b> – increases in encoding rate and resolution will improve quality</p> <p><b>Encoding Rate</b> 1.0 Mbps -&gt; 1.25 Mbps</p> <p><b>Resolution</b> 320x240 -&gt; 480x480</p>	<p><b>Improved Response Time</b> - Planned browser-based application should reduce the initial application load time by 50% to approximately 10-15 seconds</p>	<p><b>Further Improved Response Time</b> - Additional developments in 2009 are expected to make the PEG application run at virtually the same launch time as other core elements (i.e. the guide, the menu)</p>	<p><b>Closed Captioning &amp; SAP</b> - Enable users to toggle between captioned content and non-captioned content or to listen to PEG content in secondary audio (typically Spanish).</p>



CERTIFICATE OF SERVICE

I hereby certify that I have, on this 9th day of March 2009, caused a true and correct copy of the foregoing Comments to be served on the following individuals via first-class U.S. mail, postage prepaid:

James N. Horwood  
Spiegel & McDiarmid  
1333 New Hampshire Avenue, N.W.  
Washington, DC 20036

Teresa S. Decker  
Varnum  
Bridgewater Place  
P.O. Box 352  
Grand Rapids, MI 49501-0352

  
Gail A. Karish